

REMARKS

Applicants thank the Examiner for the Interview of May 17, 2010. This paper is in reply to the Final Office Action dated March 26, 2010 and restates arguments and proposed amendments discussed in that interview. Applicants respectfully assert that the instant claims are in a condition for allowance and respectfully request allowance of the same.

Status of the Claims

Claims 15, 16, 20, 32, 34, 69, and 70 are presently pending in the instant application and were examined in the instant Action. While claims 20 and 34 were indicated as allowable, claims 15, 16, 32, 69 and 70 were rejected as obvious under 103(a) in view of De Azevedo et al., *Journal of Organic Chemistry* (1992), 57(170, 4567-9).

Claims 15 and 69 have been amended such the alkyl moiety of R²² recites between 7 and 20 carbon atoms. Support may be found in at least page 16, Ins. 1-5 of the originally filed specification such that no new matter has been added by these amendments. Reconsideration of the claims, as amended, is respectfully requested in view of the amendments and arguments provided.

Rejections under 35 U.S.C. 103(a)

In the instant Action, claims 15, 16, 32, 69, and 70 were rejected under 103(a) as being obvious over De Azevedo *et al.* More specifically, De Azevedo *et al.* was cited as disclosing compound RN # 142188-52-1. While this species was acknowledged as falling outside the scope of the claim language, it was argued to be modifiable to obtain a species of compound within the instant invention.

Applicants first respectfully disagree that the instant rejection satisfies *prima facie* obviousness. Under MPEP 2144.09, *prima facie* obviousness for structural homology requires similarity in both structure and function. The similarity of function provides the motivation for one skilled in the art to make the claimed compound and satisfies the expectation (i.e. predictability) that it will have similar properties as that claimed. Reaction scheme intermediates, however, cannot satisfy both requirements without some teaching or suggestion that it would have the same properties. (See MPEP 2144.09 section VI). The rationale behind this is that an intermediate compound is not presumed to exhibit the same properties as the end-product. Absent some express reason for doing so, one of ordinary skill in the art would not think to stop the reaction process and isolate the intermediate for production or further development. *See In re Robert J. Gyurik*, 596 F.2d 1012, 1018 (CCPA 1979); *In re Lalu*, 747 F.2d 703, 706 (Fed. Cir. 1984). Accordingly, without some teaching of the properties associated with the intermediate, citation to an intermediate compound solely for its structural similarity to a claim does not and cannot support a case for *prima facie* obviousness.

Applicants note that, in the instant case, the cited compound (RN # 142188-52-1) is an intermediate by-product formed at steps f-h of reaction scheme I. (See page 4568 of De Azevedo *et al.*) While the function of the final product may be characterized in the reference, there is no discussion of the properties associated with the compound cited in the instant Action, or with any of the other intermediates for that matter. Thus, the rejection fails to satisfy the requirements of MPEP 2144.09 and the holdings of *In re Robert Gyurik* and *In re Lalu*. For at least this reason, Applicants respectfully assert that the instant rejection does not support *prima facie* obviousness.

In the interest of furthering prosecution of the instant case, Applicants nevertheless have amended claims 15 and 69 to further traverse the instant rejection. Specifically, these claims are amended recite that the alkyl moiety of R²² has between 7 and 20 carbon atoms. Applicants note that this amendment further distinguishes each of the instant claims from the end-product, as well as each of the intermediates of De Azevedo *et al.* Accordingly, Applicants respectfully assert that the rejection of claims 15, 16, 32, 69 and 70 under 35 U.S.C. 103(a) are traversed. Withdrawal of this rejection and allowance of the claims in their amended form is respectfully requested.

Conclusion

Based on the foregoing, Applicants contend that this application is in a condition for allowance and an early notice to this effect is earnestly solicited. Should the Office have any questions or comments with respect to this response, it is invited to telephone the undersigned at (215) 299- 2772 to discuss.

To the extent there are any fees required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, including extension fees, the Commissioner is authorized to charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

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